



WAD 2917
FF#3C
5-26-93

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

P.O. BOX 47600 • Olympia, Washington 98504-7600 • (206) 459-6000

May 26, 1993

Keith Lund
Burlington Environmental Inc.,
Technical Services Division
PO Box 3552
Seattle WA 98124

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RCRA PERMITS SECTION

Dear Mr. Lund:

Re: Burlington Environmental Inc. (Burlington) Pier 91 facility permit appeal

As we agreed during our meeting of May 12, 1993, the Department of Ecology (Ecology) is providing further information concerning appealed portions of the Pier 91 facility permit. Enclosure 1 to this letter describes the current status of all of the issues of the appeal.

Ecology has reviewed the revised draft letter prepared by Marlys Palumbo concerning corrective action responsibilities (Appeal Item A). Based upon our review, as well as comments provided by EPA and the Port of Seattle, Ecology has prepared a new revised draft. This draft is provided as enclosure 2.

With regard to Item B. (Use of accredited lab and exemption of certain waste streams from analysis), Ecology agrees to Burlington's suggestion for Permit Condition II.C.1.b.vi. concerning retention of audit records at the Airport Way offices. Ecology also agrees to Burlington's suggested addition of Permit Condition II.A.6.d.ii. regarding the exemption of bulk unused commercial chemical products from periodic full characterization by analysis.

At our meeting on May 12, Burlington also requested clarification concerning the use of the word "approved" in Permit Condition II.A.6. as opposed to "accepted". The agreed settlement language for the both the Georgetown and Washougal permits use the word "approved". I am unable to determine from the administrative record why the final Pier 91 permit used the word "accepted". However, Ecology believes that the word "approved" is more appropriate, and is consistent with WAC 173-303-110. Regarding your concern that no formal approval method exists, Ecology believes that the permit issuance and modification process both meet the public involvement requirements of WAC 173-303-110(4) for substantial changes from listed methods. Waste analysis performed by Burlington may only utilize methods specified in a waste analysis plan approved through the permit issuance or permit modification process; consequently, all such methods are "approved".

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With regard to Item F. (Clean closure requirements), Ecology has agreed to provide clarifying language for inclusion in the settlement agreement. We have not prepared that draft language. I will attempt to provide it for your review prior to our next meeting, scheduled for June 9, 1993.

With regard to Item G. (Tank compliance requirements), Ecology has received Burlington's latest proposal for leak detection on the existing double bottom tanks (2705-2708). After initial review of the new design, Ecology has significant concerns about this proposal. Ecology believes that this issue is of primary importance. Consequently, we are providing some preliminary comments (Enclosure 1) based upon the initial review. Ecology expects that Burlington will be prepared to discuss these comments on the new design at our meeting on June 9.

As Stephanie Delaney of the Attorney General's office explained in her letter of May 19 to John Stiller, Burlington should have requested an extension from the requirements of Permit Condition IV.A.4. for the continued operation of tanks 2705-2708. Burlington is currently operating these tanks in dangerous waste service at Ecology's enforcement discretion. In addition, Ecology's agreement to a stay of Permit Condition IV.A.3. was contingent upon discussion of Burlington's *first* alternative design proposal. Ecology makes no commitment to exercise enforcement discretion. However, Burlington must demonstrate a willingness to fully address Ecology's concerns in a timely manner.

With regard to Item I. (General compliance requirements), Ecology agrees to Burlington's suggestion that the right of appeal be added to Permit Condition IV.C.4. Ecology has provided suggested language to this effect.

Please review the enclosures. If you have any questions you may call me at 459-6993. Otherwise, I expect that we can discuss these, as well as the other issues, at our meeting on June 9. I look forward to seeing you then.

Sincerely,



Douglas Brown
Hazardous Waste Permits

Enclosure

cc: Stephanie Delaney, AAG/Ecology
Doug Hotchkiss, Port of Seattle
Julie Sellick, NWRO
Carrie Sikorski, EPA Region 10

**Pier 91 Appeal Issues
Current Status (May 26, 1993)**

A. Designation of the Port as Permittee

Burlington is concerned that the permit makes them solely responsible for facility wide corrective action. Ecology and EPA will provide clarification in a separate letter concerning the current and future responsibility of Burlington for corrective action.

B. Required Use of Washington State Accredited Laboratory and Exemption of Certain Waste Streams from Lab Analysis

Burlington will submit a revised Quality Assurance/Quality Control (QA/QC) Plan. If Ecology finds this plan acceptable, Ecology will agree to revise Permit Condition II.A.6. in order delete the requirement for use of a state certified laboratory. Both parties have agreed to the revised language for this permit condition.

As with the Georgetown facility agreement, both parties agree to add Permit Condition II.C.1.b.vi. so as to specify the retention time for laboratory audit records, with the provision that records may be maintained at Burlington corporate offices at Airport Way.

With regard to the exemption of certain waste streams from analysis, both parties have agreed to revised language for Permit Condition II.A.6. The agreed language adds II.A.6.d.ii., regarding bulk unused commercial chemical products, to Burlington's previously suggested language, (see April 28, 1993 letter C. Buller to D. Brown).

Agreed permit language:

- II.A.6. Each regulated generator waste stream which is received by the Permittee more than twice a year shall undergo annual full characterization. Full characterization is defined as completing a waste profile sheet which shall identify the dangerous constituents and characteristics necessary for proper designation and management of the waste stream, along with accounting for 100% of the material (e.g., 30% oil, 70% water).
- a. Except as specified in c. below, full characterization shall include or consist of:
 - i. Existing published or documented data on the dangerous waste or on waste generated from similar processes. The use of existing published

or documented data shall include confirmation by the generator that the process generating the dangerous waste has not significantly changed; or

- ii. Laboratory analysis of the waste stream consisting of chemical, physical, and/or biological analyses using methods which are approved by the Agency or Department. Wastes shall be analyzed for all hazardous constituents except those which can be demonstrated not to be present in any of that generator's waste streams, or those which do not change the proper designation and management of the waste stream.
- b. Analysis for the purposes of a.ii. above shall be performed by a laboratory which meets one of the following standards:
- i. The laboratory is accredited by Washington State under Chapter 173-50 WAC; or
 - ii. The laboratory meets the standards of the Quality Assurance Program Plan, Appendix C-3 of Attachment CC. Such a laboratory shall be audited by the Permittee every two years or whenever analyses for the purposes of full characterization are performed, whichever is longer.
- A. If the Department determines that any laboratory utilized by the Permittee does not meet the requirements of the Quality Assurance Program Plan, the Department may issue a final decision requiring a new audit of that laboratory. The issuance of such a decision shall constitute an Agency action subject to the rights of appeal under Chapter 34.05 RCW.
- B. Except for frequency, audits of laboratories by the Permittee shall be performed as specified in the Quality Assurance Program Plan.
- c. In the following circumstances a waste stream shall undergo full characterization consisting solely of laboratory analyses meeting the requirements of a.ii. above, and knowledge as necessary to designate a waste under WAC 173-303-080, Dangerous Waste Lists. Such characterization shall occur prior to receipt of the next shipment of that waste stream.
- i. The permittee has been notified, or has reason to believe, that the process or operation generating the dangerous waste has significantly changed;
 - ii. There is a discrepancy between a generator's waste designation, as provided by the generator's waste profile and the Permittee's waste

designation, as determined by the screening analysis and any further waste analysis;

- iii. The first time a waste undergoes full characterization. This shall include but not be limited to all waste streams for which waste profiles are amended, such as pursuant to Permit Condition II.A.14.a.i.; and
 - iv. No more than five years from the last full characterization by laboratory analysis.
- d. The following wastes are exempt from the requirement of c. above, periodic full characterization by laboratory analysis only:
- i. Residue and debris from the clean up of spills or releases of:
 - A. A single known substance;
 - B. A commercial product; or
 - C. Other material for which a MSDS or waste profile can be provided;
 - ii. Bulk unused commercial chemical products (i.e., off-specification or outdated materials).

- II.C.1. b. vi. Records of laboratory audits pursuant to the Quality Assurance Program Plan, Appendix C-3 of Attachment CC, and Permit Condition II.A.6.b.ii. (may be by reference to records at the corporate office).

C. PCB Analysis of Each Shipment of Incoming Waste

Ecology has agreed in principle that PCB analysis of outgoing waste may be satisfactory. Burlington has provided suggested language for a revised Permit Condition II.A.12. and new Permit Condition II.A.17. (see April 28, 1993 letter C. Buller to D. Brown). At the May 12, 1993 meeting Ecology suggested that existing Permit Condition II.A.12. be deleted and that Burlington's suggested Permit Condition II.A.17. become the new Permit Condition II.A.12. instead. Based upon Ecology's comments at the meeting concerning Burlington's suggested language, Burlington will provide revised suggested language.

Concerns expressed by Ecology were that the permit needed to identify the procedures should PCB be detected in an outgoing load. Specifically, Burlington

needs to identify how the source of the contamination will be identified and how contaminated materials will be identified and disposed.

D. Ignitability Testing Requirements

Ecology has provided suggested revised language for Permit Condition II.A.16. (see April 28, 1993 letter D. Brown to C. Buller). Based upon discussion at the May 12, 1993 meeting, Burlington will provide further revised suggested language

E. Maintenance of Certain Records at the Facility

Both parties have agreed to revised language for Permit Condition II.C.1.d.v.

Agreed permit language:

- II.C.1. d. v. All closure, interim measures, and final corrective action cost estimates; financial assurance documents prepared pursuant to this Permit; as well as the company names and addresses of Permittee insurers (may be by reference to records at the corporate office);

F. Clean Closure Requirements

Burlington has requested clarification regarding the relationship of the closure standard of Permit Condition II.D.7., which requires the removal of *all* waste constituents, and the approved closure plan which has a limited list of analytes. Ecology and EPA have explained that by implementing the approved plan Burlington can demonstrate clean closure and can meet the closure standard of Permit Condition II.D.7. Burlington has requested that language to this effect be included in the permit. Ecology contends that such language is unnecessary; this is the standard interpretation of closure requirements. However, Ecology has offered to include a clarification statement in the appeal settlement agreement. Suggested language for that statement will be provided in a separate letter.

G. Tank Compliance Requirements

Burlington has proposed another new design for a leak detection system for the existing double bottom tanks (2705-2708) at the facility (see May 21, 1993 letter J. Stiller to D. Brown). After initial review of this design, Ecology has significant concerns about this proposal. The current design is not adequate as proposed. Ecology is providing preliminary comments based upon this initial review. Burlington should be prepared to discuss these comments at the meeting on June 9, 1993.

Ecology concerns regarding proposed leak detection for tanks 2705-2708:

- It is unlikely that the seal between concrete and the tank wall will remain intact for the expected life of the tank. Repeated thermal expansion, as well as exposure to the atmosphere are very likely to compromise the integrity of this seal. The current design does not allow for inspection and repair of the seal.
- The design does not allow for detection and repair of cracks in the concrete.
- Both a faulty seal and cracks in the concrete could allow waste leaking through the primary bottom and/or condensation a pathway to the secondary steel bottom. The presence of such liquid could promote corrosion of the secondary bottom. Corrosion of the secondary bottom may also occur from the exterior.
- There is no means to verify the integrity of the secondary steel bottom.

H. Construction Schedule

Both parties have agreed to revised language for Permit Condition IV.B.1.

Agreed permit language:

IV.B.1. Construction related activities identified below shall be performed within the time specified.

- a. The loading/unloading pad shall be completed within seven (7) months of the permit effective date.
- b. The following activities shall be completed within 60 months of the permit effective date. The Permittee shall notify the Department at least 120 days prior to the initiation of construction.
 - i. Area A (See Figure IV-1):
 - A. Upgrade secondary containment to meet Permit requirements;
 - B. Remove tanks 106 and 108; and
 - B. Install tanks 2702 and 2704.
 - ii. Area B (See Figure IV-1):
 - A. Upgrade secondary containment to meet Permit requirements; and
 - B. Retrofit double bottoms on tanks 2701 and 2703.

iii. Area C (See Figure IV-1):

- A. Upgrade secondary containment to meet Permit requirements;
- B. Install tanks 2307, 2308, 2309, and 2310; and
- C. Place tanks 2709 and 2710 into service. Tank 2709 shall be designed and constructed in accordance with all specifications in Figure D1-11, Attachment II; Drawings 43007 and 44006, Appendix D-8 of Attachment II; and the structural and corrosion integrity assessments of Appendix D-9 of Attachment II.

I. General Compliance Requirements

Burlington has generally agreed to Ecology's suggested language (see April 28, 1993 letter D. Brown to C. Buller). Burlington has requested additional clarification concerning the type, interval, and frequency of analysis, consistent with WAC 173-303-810(11). Burlington will draft suggested language to this effect. Burlington has also requested the addition of an appeal rights to this condition. Ecology has agreed to this, and is providing suggested language.

Ecology's suggested language:

- IV.C.4. Upon request by the Department, the Permittee shall submit samples of waste or environmental media for analysis by an independent, accredited laboratory. The Department may require analysis for any waste constituent, characteristic, or criteria which has a reasonable possibility of being present. Submittals under this provision shall be limited to two (2) events per year, and 12 samples per event. Requests by the Department under this provision shall constitute an Agency action subject to the rights of appeal under Chapter 34.05 RCW.

DRAFT

May 26, 1993

Keith Lund
Burlington Environmental Inc.,
Waterfront Place One
1011 Western Ave, Suite 700
Seattle WA 98104

Dear Mr. Lund:

Re: Corrective action responsibility at the Burlington Environmental Inc. (Burlington)
Pier 91 facility

As we discussed in our meeting on April 7, 1993, the Department of Ecology (Ecology) and the Environmental Protection Agency (EPA) are providing clarification as to Burlington's responsibility for corrective action at the Pier 91 facility. Burlington has raised concerns that the current "state only" Dangerous Waste Facility Permit implies Burlington is solely responsible for corrective action at the entire Terminal 91 facility. This "facility", as defined in the state permit, constitutes all contiguous property owned by the Port of Seattle at Piers 90 and 91. This "facility" encompasses approximately 124 acres. Within this area, Burlington currently leases approximately four acres (the Premises) from the Port of Seattle. Note that the Premises include structures and leased underground piping. Less than two acres of the Premises are permitted by the state for continued waste management operations. The remainder of the Premises will remain Burlington's responsibility for purposes of corrective action, ~~closure, and other legal requirements~~. The implication that Burlington has primary responsibility for the approximately 120 acres outside the boundaries of the Premises is not Ecology's or EPA's intent.

Ecology and EPA recognize that Burlington's responsibility for corrective action is limited to contamination on the premises, contamination originating on the premises that has migrated outside the premises, and any other contamination outside the Premises that occurred as a result of Burlington's operations. As such Ecology and EPA expect that Burlington will comply with the existing RCRA Section 3008(h) order covering the Premises until RCRA corrective action requirements relating to permitted facilities under RCRA Section 3004(u) are in effect under the final RCRA/HSWA Permit. With respect to contamination on property surrounding the Premises owned and controlled by the Port of Seattle, to the extent such contamination does not originate from the Premises or

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Burlington's operations, the Port of Seattle will bear corrective action responsibility. The HSWA permit to be issued by EPA will delineate the RCRA corrective action responsibilities of Burlington and the Port of Seattle, and both parties may participate in the comment and appeal process set forth in 40 CFR Part 124 at the time that permit is issued.

We hope that this letter provides sufficient clarification of your corrective action responsibilities at Pier 91. If you have any further questions please contact Doug Brown at Ecology at 459-6993 or Christy Ahlstrom at 553-8506.

Sincerely,

Gerald Lenssen, Supervisor
Hazardous Waste Permits

Carrie Sikorski, Chief
RCRA Permits Section

cc: Stephanie Delaney, AAG/Ecology
Doug Hotchkiss, Port of Seattle
Julie Sellick, NWRO